



**HUSCH BLACKWELL SANDERS LLP WELSH & KATZ**  
**120 SOUTH RIVERSIDE PLAZA, FLOOR 22**  
**CHICAGO IL 60606-3912**

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**OFFICE OF PETITIONS**

In re Patent No. 7,172,175	:	
Issue Date: February 6, 2007	:	
Application No. 10/764,902	:	ON PETITION
Filed: January 26, 2004	:	
Attorney Docket No. 4446-103230-CON	:	

This is a decision on the petition, filed August 11, 2009, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/114,356, filed April 3, 2002, by way of a Certificate of Correction.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR §§ 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR §§ 1.78(a)(3), petitioner has submitted a Certificate of Correction in order to correct the specification following the title to include a reference to the prior-filed application.

The current procedure where a proper claim for priority under 37 CFR §§ 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does properly appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §§ 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR §§ 1.78(a)(3).<sup>1</sup> In the instant case, the Office noted the claim for priority of prior-filed Application No. 10/114,356, filed April 3, 2002, in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt mailed May 4, 2004.

<sup>1</sup> Note MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

In view of the above, the \$1,410.00 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Further, in the above-identified patent, the Office has issued a Certificate of Correction mailed September 8, 2009.

Any questions concerning this decision on petition may be directed to Joan Olszewski at 571-272-7751. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

/Liana Walsh/  
Liana Walsh  
Petitions Examiner  
Office of Petitions